RECENT CASE NOTES

ADMIRALTY—JURISDICTION—HYDRO-AEROPLANE A VESSEL.—The State Industrial Commission awarded compensation to the claimant for an injury caused him by the propeller of a hydro-aeroplane which he attempted to save from being wrecked after she had begun to drift from her mooring. The defendant denied the jurisdiction of the commission. *Held,* that a hydro-aeroplane upon the water is a vessel and within admiralty jurisdiction; and consequently the award of the Commission should be reversed. Matter of *Reinhardt v. Newport Flying Service Corporation* (1921) 232 N. Y. 115.

In a case where a libellant sought to enforce a lien for repairs upon an aeroplane, an intervening libellant who had salvaged the aeroplane after it had fallen into certain waters defeated the cause of the libellant for repairs upon the ground that an admiralty court had no jurisdiction in his case. *The Crawford Bros. No. 2* (1914, W. D. Wash.) 215 Fed. 269. In does not appear in the report of that case whether the repairs were made prior to, or after the time of, the wreck. Were the repairs made prior to the time of the wreck, it would seem that that decision held that an aeroplane was not a vessel. Were the repairs made after the wreck, the decision would at the very least stand for the doctrine that a plane during the moment of a crash did not suffer transformation from aeroplane to vessel. The instant case says that *The Crawford Bros. No. 2* stands for the rule that "a hydro-aeroplane, while in the air, is not subject to the admiralty." The present decision lays down the practically applicable rule that a hydro-aeroplane when travelling through the water is a vessel. At least one secondary purpose for which a hydro-aeroplane is designed is navigation upon the water. While so navigating it is essentially a vessel,—certainly as much as is a hopper barge for dredging or a floating bath-house. *The Mudlark* [1911] P. 116; *The Public Bath No. 13* (1894, S. D. N. Y.) 61 Fed. 692. A plane is "within the jurisdiction of the admiralty," the instant case decides, "when it is in the fulfillment of its function as a traveller through water and has put aside its functions and capacities as a traveller through air." But the moment when collision with a ship is most likely to occur is when it is on its step, four-fifths supported by the air, barely held by the water, and moving at a speed certainly over thirty knots. The test is then indeed questionable. And what court has jurisdiction when the plane is taking off in a rough sea, bounding from wave to wave and certainly not in flight? The amphibious character of the "vessel" invites unlimited speculation, not without humor. "Riding at anchor is a new craft," observes the court, "which would have mystified the Lord High Admiral in the days when he was competing for jurisdiction with Coke and the Courts of Common Law." The craft's mystifying nature may well require a federal statute giving federal jurisdiction over hydro-aeroplanes, whether "on the water" or in the air above it.

BANKS AND BANKING—AUTHORITY OF A BANK AS COLLECTING AGENT TO ACCEPT A CHECK DRAWN ON ITSELF AS PAYMENT OF A DEBT.—The plaintiff sent a draft on the defendant to a bank for collection, with specific instructions that the bank should receive in payment cash only, or its equivalent. The bank, however, accepted from the defendant a check drawn on itself, at a time when the bank knew itself to be insolvent. The next day the bank passed into bankruptcy. The plaintiff then sued the defendant for the amount of the draft. *Held,* that the plaintiff should recover as acceptance by the bank of the check did not constitute payment of the draft. *Sanitary Can Co. v. National Pickle & Canning Co.* (1921, Iowa) 184 N. W. 354.

In the absence of specific authority, an agent to collect has no implied authority to receive anything but money in payment of his principal's debt. *Ormsby v. Graham* (1904) 123 Iowa, 202, 98 N. W. 724; *Everts v. Lawther* (1897) 165 Ill. 487, 46 N. E. 233. A bank acting as a collecting agent is no exception to this rule. *Bank of Shaw v. Ransom* (1916) 112 Miss. 440, 73 So. 280. But if an agent has good reason to believe that a check will be paid, he can accept it as a conditional payment of the debt. *Bellevue Bank v. Security Nat. Bank* (1915) 168 Iowa, 707, 150 N. W. 1076. Such acceptance is payment only when the check is honored by the drawee. *Born v. First Nat. Bank* (1889) 123 Ind. 78, 24 N. E. 173. But there are conflicting theories as to the effect of acceptance, by a collecting bank, of a check drawn on itself in payment of the principal's debt. The majority opinion is that the acceptance of such a check would be payment of the debt, since it would be absurd to require the debtor to obtain cash for his check and then replace the cash in the bank in order to change a conditional into an absolute payment; that it being the custom of a bank to so accept checks drawn on itself, the principal would be presumed to know and to consent to this custom. *British & American Mortgage Co. v. Tibballs* (1884) 63 Iowa, 468, 19 N. W. 319; *Shafer v. Olson* (1912) 24 N. D. 542, 139 N. W. 983; *Bartley v. State* (1898) 53 Neb. 310, 73 N. W. 744; 2 Bolles, *Modern Law of Banking* (1907) 602. The minority view is that such a transaction would not be payment, as it would only be an attempt by the drawer of the check to substitute his bank for himself as debtor, and would no more relieve him than if the check were drawn on another bank. *State Bank v. Byrne* (1893) 97 Mich. 178, 56 N. W. 355. See dissenting opinions *British & American Mortgage Co. v. Tibballs, supra; Schafer v. Olson, supra.* Such a conflict of opinion might be expected to arise when courts are called upon to decide which of two equally innocent parties must suffer. In the instant case the bank had not passed into a receiver's hands when the collection was made, nor does it appear that the bank was bankrupt when it accepted the paper for collection. But as the bank knew that it was insolvent when it made the collection, the decision of the Court was correct, since the bank had no implied authority to accept a check which it knew would not be paid. *Bellevue Bank v. Security Nat. Bank, supra.* Had, however, the bank accepted the draft for collection while insolvent, or made the collection after it had made a general assignment, then the funds would have been held in trust for the plaintiff, instead of his coming in merely as a creditor of the bankrupt bank. 2 Michie, *Banks and Banking* (1913) sec. 166. Under such a state of facts, it is submitted that the majority view would be more just in that the plaintiff could recover from another, not an innocent party.

CONFLICT OF LAWS—CONSTRUCTION OF DEEDS GOVERNED BY LAW OF GRANTOR'S DOMICIL.—A grantor domiciled in Massachusetts executed a trust deed disposing of land situated in New York and directed that the heirs at law of the beneficiaries under the deed should take on the death of the last surviving beneficiary. *Held,* that the law of Massachusetts should be applied in determining who were the heirs at law of such beneficiary. *Cary v. Carman* (1921, Sup. Ct.) 190 N. Y. Supp. 193.

In the interpretation of ambiguous language in a deed the courts are guided primarily by the presumed intention of the grantor. *Kearney v. Kirkland* (1917) 279 Ill. 516, 117 N. E. 100. A peculiar difficulty arises where the language has been construed to have one meaning in the jurisdiction where the person executing the instrument is domiciled and another in the jurisdiction where the land is situated. Under the general rule that the devolution of real estate is governed by the *lex loci rei sitae,* a few courts have held that they are bound by the interpretation of the courts where the land is located. *Peet v. Peet* (1907) 229 Ill. 341, 82 N. E. 376; *Shaws v. Grimes* (1919) 187 Ky. 250, 218 S. W. 447. The weight of authority however is that the interpretation which prevails in the courts of the